STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 15, 2014
v	No. 314420 Jackson Circuit Court
RICKY LEE WHEELDON, Defendant-Appellant.	LC No. 10-006329-FH

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Defendant, Ricky Lee Wheeldon, appeals as of right his convictions, following a jury trial, of conducting a criminal enterprise (racketeering),[1] receiving or concealing stolen firearms,[2] felon in possession of a firearm,[3] possession of a firearm during the commission of a felony,[4] receiving or concealing a stolen motor vehicle,[5] receiving or concealing stolen property with a value of $20,000 or more,[6] possession with intent to deliver less than 50 grams of cocaine,[7] possession with intent to deliver 5 kilograms or more but less than 45 kilograms of marijuana,[8]

[1] MCL 750.159i(1).

[2] MCL 750.535b.

[3] MCL 750.224f.

[4] MCL 750.227b.

[5] MCL 750.535(7).

[6] MCL 750.535(2)(a).

[7] MCL 333.7401(2)(a)(*iv*).

[8] MCL 333.7401(2)(d)(*ii*).

and possession of methamphetamine.[9] The jury acquitted Wheeldon of resisting and obstructing a police officer.[10]

The trial court sentenced Wheeldon, as a fourth-offense habitual offender,[11] to serve concurrent terms of 24 to 50 years' imprisonment for his racketeering conviction, 4 to 8 years' imprisonment for his convictions of receiving or concealing stolen firearms, receiving or concealing a stolen vehicle, and receiving or concealing stolen property with a value of $20,000 or more, 7 to 12 years' imprisonment for his convictions of possession with intent to deliver cocaine, possession with intent to deliver marijuana, and possession of methamphetamine. The trial court also sentenced Wheeldon to serve a consecutive term of 5 years' imprisonment for his felony-firearm conviction. We affirm.

I. FACTS

A. BACKGROUND FACTS

Detective Charles Buckland testified that, in October 2010, he interviewed David Cunningham about his involvement in a home invasion. Cunningham testified that he told Detective Buckland that, beginning in 2005, he committed more than 100 home invasions for Wheeldon in exchange for cash, marijuana, and cocaine. According to Cunningham, while spending time with Wheeldon at his home at 818 Munith Road, he saw people drop off items—including tools, lumber, windows, generators, and a Harley Davidson motorcycle—and leave with bags of marijuana or cocaine. Wheeldon stored the stolen property in his pole barn.

Cunningham was imprisoned between 2005 and 2010. When he was released, he began working with Wheeldon again. Specifically, Wheeldon wanted him to steal items from a house on Parman Road. Wheeldon and Cunningham stole silver, pictures from the walls, knick-knacks, furniture, and four pistols. Cunningham testified that he and Wheeldon unloaded the items at 6546 Jordan Road.

B. THE SEARCH WARRANTS

Detective Timothy Schlundt testified that, after speaking with Detective Buckland, he prepared affidavits for warrants to search 818 Munith Road and 6546 Jordan Road. Detective Schlundt testified that he wanted to search for items stolen from the Parman Road home and from six other homes in the area. Detective Schlundt stated that the crimes were outstanding and had no other suspects.

Detective Schlundt's warrant affidavit detailed the information that Detective Buckland stated that Cunningham had told him; Cunningham's statement regarding the Parman Road home

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[9] MCL 333.7403(b)(*ii*).

[10] MCL 750.81d(1).

[11] MCL 769.12.

invasion and other home invasions in Ingham and Jackson counties; Detective Buckland's investigation of the Parman Road home invasion and description of the items taken from that home; Detective Buckland's description of items taken from a home in Stockbridge, including two trucks, construction equipment; Detective Buckland's description of a backhoe taken from a home on Hull Road; Detective Buckland's description of motors, tools, and construction equipment taken from a home in Leslie; Michigan State Police Trooper Gina Gettel's description of a truck, trailer, and construction equipment taken from a home on Bunkerhill Road; a description of electronics, yard tools, power tools, hand tools, and tires taken from a home in Grass Lake Township; and Cunningham's description of an aluminum brake leaning against the garage at 6546 Jordan Road that matched the description of an aluminum brake stolen from the home in Stockbridge.

The warrants for 818 Munith Road and 6546 Jordan Road included broad categories of property for officers to seize:

> Any and all stolen property, as reported in outstanding police complaints or items believed to be stolen based on the totality of the circumstances surrounding this investigation. Specifically, but not limited to, this would include, handguns, long guns, china, silverware and silver, antique clocks and other furniture. Also to be seized if located are construction/landscape tools, to include hand and power tools, generators, compressors, heavy equipment, tires, rims, aluminum brakes (in the construction trade), and any other items specifically listed below:
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> Any and all illegal controlled substances including but not limited to marijuana and cocaine.
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> Any and all items used in packaging, manufacturing, cooking, storing, weighing or processing illegally controlled substances for sale.
>
> Any and all weapons including but not limited to firearms.
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> Any and all items taken in exchange for drugs including but not limited to US currency.
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> Any and all items of residency including but not limited to, deeds, bills, leases, phone records, bank records, safety deposit box records, income tax forms and identification.
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> Any and all items used in the recording of illegal drug sales, thefts and or future criminal planning, including but not limited to, tally sheets, ledgers notebooks, video tapes, cassette tapes, journals, computer discs and computers.
>
> Any and all cell phones, PDA's, computers, and/or electronic storage devices located at the residence and the electronic data contained/stored within the cellular telephones, computers, or other electronic devices.

On November 3, 2010, officers executed the search warrants at 818 Munith Road and 6546 Jordan Road. Trooper Gettel testified that when officers executed the warrant at 818 Munith Road, officers saw Wheeldon entering and leaving a garage at 813 Munith Road. According to Gettel, after Wheeldon failed to comply with her commands to remove his hands from his pockets, she tazed him because she believed that he was trying to get a weapon. Officers also obtained a warrant to search 813 Munith Road. Officers seized hundreds of items pursuant to the warrant, including 5,029 grams of marijuana in gallon bags, 7.75 grams of methamphetamine, and 40.64 grams of cocaine.

C. MOTION TO QUASH

Before trial, Wheeldon moved to quash the search warrants and exclude evidence that officers seized under them. Wheeldon asserted that the warrants did not particularly describe the items that officers were to seize and that the affidavits supporting the warrants did not provide probable cause. The trial court denied Wheeldon's motion to quash because more detail would have been impractical and overly burdensome given "the massive scope of the enterprise that Cunningham is informing the police of[.]"

D. MOTION TO SEVER

Wheeldon asserted that the charges were not related or connected and moved to sever the nine charges against him under MCR 6.120(B) and (C). Wheeldon sought to split the charges into five trials, including a separate trial for his charge of resisting or obstructing. The trial court denied the motion on the basis that the charges involved a common scheme.

E. VIEW OF THE EVIDENCE

At trial, witnesses described and identified over 100 items of stolen property, including guns, John Deere mowers and tractors, home appliances, tools, antiques, clocks, and miscellaneous personal items. The prosecutor moved for a jury view of the property, located at a storage facility, because of the large size and quantity of the items. The trial court granted the prosecutor's motion on the basis that there were too many items to bring into the courtroom. After the jury view, the trial court instructed the jury that it was not to make inferences about the property, and that it was still the prosecutor's burden to show that Wheeldon stole the items.

II. PARTICULARITY OF THE SEARCH WARRANTS

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

This Court reviews for clear error the district court's findings of fact at a suppression hearing.[12] The trial court's factual findings are clearly erroneous if, after reviewing the record,

[12] *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999); *People v Dillon*, 296 Mich App 506, 508; 822 NW2d 611 (2012).

we are definitely and firmly convinced that the trial court made a mistake.[13] We review de novo the trial court's ultimate decision on the motion.[14]

We review a magistrate's determination that probable cause supports a search warrant to determine whether a reasonable person could conclude a substantial basis existed to find probable cause.[15] We must read the search warrant and the underlying affidavit "in a common-sense and realistic manner," and give deference to the magistrate's decision.[16]

To preserve an issue for review, the defendant must challenge the issue before the trial court on the same ground that the defendant challenges it on appeal.[17] Here, Wheeldon challenged the warrants on the basis that (1) the warrants lacked particularity, (2) the affidavit omitted information and contained misleading information, and (3) the warrants affidavit lacked probable cause to support the warrants. Thus, these issues are preserved.

However, Wheeldon did not argue below that police seized more property than was mentioned in the warrant. Thus, this issue is unpreserved. We review unpreserved issues for plain error affecting a party's substantial rights.[18] An error is plain if it is clear or obvious, and the error affected the defendant's substantial rights if it affected the outcome of the lower court proceedings.[19]

B. LEGAL STANDARDS

Both the United States and Michigan Constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures."[20] To comply with this requirement, police officers must have a warrant to conduct a search, or must establish that their conduct was within an exception to the warrant requirement.[21] If officers violate the Fourth Amendment while

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[13] *Dillon*, 296 Mich App at 508.

[14] *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

[15] *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992).

[16] *Id*. at 604.

[17] *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

[18] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[19] *Id*.

[20] *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). See US Const, Am IV; Const 1963, art 1, § 11.

[21] *Kazmierczak*, 461 Mich at 418.

obtaining evidence, the evidence is not admissible as substantive evidence in a criminal proceeding.[22]

A magistrate may only issue a search warrant if there is probable cause.[23] Probable cause exists when "there is a substantial basis for inferring a fair probability" that police will find contraband or evidence of a crime in a particular place.[24] Courts consider the totality of circumstances, including "the criminal, the thing seized, the place to be searched, and, most significantly, the character of the criminal activities under investigation."[25]

C. PROBABLE CAUSE

Wheeldon contends that probable cause did not support the search warrants for 818 Munith Road and 6546 Jordan Road. We disagree.

We conclude that, under the totality of the circumstances, probable cause supported the magistrate's decision to issue a search warrant for 6546 Jordan Road. Detective Buckland's warrant affidavit contained detailed information that linked Wheeldon to the home invasion on Parman Road and indicated that evidence of that home invasion would likely be found at 6546 Jordan Road. Specifically, Cunningham told Detective Buckland that he and Wheeldon had unloaded property stolen from Parman Road at the Jordan Road property a few weeks earlier. Thus, we conclude that the magistrate had a sufficient basis from which to infer that police would find evidence of the home invasion at 6546 Jordan Road.

We also conclude that, under the totality of the circumstances, probable cause supported the magistrate's decision to issue a search warrant for 818 Munith Road. Detective Schlundt's affidavit provided that Cunningham informed him that he repeatedly stole items for Wheeldon in 2005 and that Wheeldon kept the stolen property at 818 Munith Road. Further, Cunningham stated that Wheeldon called him from 818 Munith Road twice: once to state that he had property to unload, which Cunningham believed was stolen, and a second time to arrange the Parman Road home invasion. Finally, the items stolen from the victims of the six unsolved home invasions matched the types of items that Cunningham stated that he and others stole for Wheeldon. Given the totality of the circumstances, the magistrate did not err in concluding that there was a reasonable probability that police would find evidence of home invasions at 818 Munith Road.

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[22] *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Kazmierczak*, 461 Mich at 418.

[23] US Const, Am IV; Const 1963, art 1, § 11; *People v Unger*, 278 Mich App 210, 244; 749 NW2d 272 (2008).

[24] *Kazmierczak*, 461 Mich at 417-418.

[25] *Russo*, 439 Mich at 605.

D. FALSE AND OMITTED INFORMATION

Wheeldon further contends that the warrant affidavit contained false statements and omitted pertinent details. We disagree.

When challenging the truthfulness of an affidavit's factual statements, the defendant must show by a preponderance of the evidence that the affiant (1) omitted material information from or inserted false material into the affidavit, (2) did so knowingly, intentionally, or with a reckless disregard for the truth, and (3) the omitted or false material was necessary to the magistrate's probable cause determination.[26]

Here, the affidavit supporting the warrant stated that there were no suspects in the ongoing investigations. Wheeler contends that this was a false statement because Deputy Kenny Hiojosa's police report stated that another man was a suspect in the Parman Road investigation. Wheeldon also stated that Detective Schlundt made a misleading statement concerning an aluminum brake. The trial court found that there was no evidence that Detective Schlundt made misleading statements or was aware of Deputy Hiojosa's report when he wrote the warrant affidavit.

We conclude that the trial court's findings were not clearly erroneous. The *existence* of information in a police report is insufficient to support a defendant's claim that an officer intentionally or recklessly—rather than negligently or innocently—failed to include the information in a warrant affidavit.[27] Thus, the mere existence of Deputy Hiojosa's report was not sufficient to support Wheeldon's claim that Detective Schlundt deliberately omitted information from his warrant affidavit. Further, the record does not support Wheeldon's assertion regarding the aluminum brake: Detective Schlundt clearly indicated in the warrant affidavit that the information about the brake came from Cunningham. Thus, we conclude that the trial court did not err when it determined that the warrant affidavit did not contain intentional or reckless misstatements or omissions.

E. PARTICULARITY

Wheeldon contends that the warrants for 818 Munith Road and 6546 Jordan Road were invalid because they did not particularly describe the items to be seized. We disagree.

A search warrant must particularly describe the place to be searched and the persons or things to be seized,[28] so that officers executing the search warrant do not have unfettered discretion to determine what to seize.[29] How specific the warrant must be "depends on the

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[26] *People v Waclawski*, 286 Mich App 634, 701; 780 NW2d 321 (2009).

[27] *Id*.

[28] *Groh v Ramirez*, 540 US 551, 557; 124 S Ct 1284; 157 L Ed 2d 1068 (2004); *People v Keller*, 479 Mich 467, 475; 739 NW2d 505 (2007).

[29] *People v Martin*, 271 Mich App 280, 304; 721 NW2d 815 (2006).

circumstances and types of items involved."[30] A warrant that describes stolen property solely by type is not sufficient if the type of property is common and not contraband.[31] However, a warrant containing a general description is not overly broad if "probable cause exists to allow such breadth."[32] Courts may consider the information in the affidavit when determining the sufficiency of the warrant's description of the items to be seized.[33]

We conclude that the warrant's inclusion of groups of items, such as "antique furniture," does not render the warrant insufficiently particular under the circumstances of this case. Here, the warrants listed broad categories of items to be seized. While the warrant is broad, it is broad because of Cunningham's statements to Detective Buckland regarding the nature and extent of Wheeldon's offenses, the extent of Wheeldon's suspected criminal enterprise, and the volume and variety of items stolen during the home invasions. Thus, the warrant was reasonably particular given the circumstances of the case.

Further, when read in conjunction with Detective Schlundt's affidavit, the warrant did not afford the officers unreasonably broad discretion to seize items. Detective Schlundt's affidavit particularly described brands, sizes, colors, features, and other characteristics of the antique furniture, guns, tools, and equipment, and described the years, models, brands, colors, and unique features of the vehicles. We conclude that there was sufficient detail in Detective Schlundt's affidavit for officers to distinguish between stolen property and property that Wheeldon legally possessed.

Finally, Wheeldon asserts that most of the property that police seized was not mentioned in the warrant. An officer may not exceed the scope of a warrant.[34] However, a defendant has the burden to establish the facts that warrant reversal.[35] Here, there is no indication in the record that any property that the police actually seized was not within the warrant's description. Thus, we conclude that Wheeldon is not entitled to relief on this unpreserved argument because he has not established the factual predicate for his claim.

F. WARRANT FOR 813 MUNITH ROAD

Finally, we note that Wheeldon contends that the warrant for 813 Munith Road fails if the other two warrants fail. Because we have concluded that the magistrate properly issued warrants for 818 Munith Road and 6546 Jordan Road, we need not determine whether the warrant for 813 Munith Road also fails.

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[30] *Id*.

[31] *United States v Campbell*, 256 F3d 381, 388-389 (CA 6, 2001).

[32] *Unger*, 278 Mich App at 246.

[33] *Groh*, 540 US at 557-558; *People v Hampton*, 237 Mich App 143, 154; 603 NW2d 270 (1999).

[34] *Martin*, 271 Mich App at 306.

[35] *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000).

III. SEVERANCE OF CHARGES

A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court's ultimate decision to deny a defendant's motion to sever charges.[36] When ruling on a motion to sever, the trial court must find facts and then determine whether those facts constitute related offenses.[37] We review for clear error the trial court's factual determinations, and review de novo its determination on whether offenses are related. [38]

B. LEGAL STANDARDS

MCR 6.120(C) requires the trial court to sever charges on unrelated offenses for separate trials if the defendant moves for separate trials. MCR 6.120(B) provides that offenses are related if they are based on

> (a) the same conduct or transaction, or
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> (b) a series of connected acts, or
>
> (c) a series of acts constituting parts of a single scheme or plan.

"Joinder of . . . other crimes cannot prejudice the defendant more than he would have been by the admissibility of the other evidence in a separate trial."[39]

C. APPLYING THE STANDARDS

Wheeldon contends that the trial court erred when it did not sever his resisting and obstructing charge for a separate trial because the evidence of that charge should not have been admissible at his criminal enterprise trial. Even presuming—without deciding—that the trial court abused its discretion by failing to sever Wheeldon's resisting and obstructing charge from his other charges, we conclude that Wheeldon is not entitled to relief.

This Court will only reverse on a claim of preserved nonconstitutional error only if, after examining the entire case, it is more probable than not that the error was outcome

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[36] *People v Girard*, 269 Mich App 15, 17; 709 NW2d 229 (2005).

[37] *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009).

[38] *Id*.

[39] *Williams*, 483 Mich at 237, quoting *United States v Harris*, 635 F2d 526, 527 (CA 6, 1980) (alteration and quotation marks omitted).

determinative.[40] An error is outcome determinative when it undermines the reliability of the verdict.[41]

Here, though three police officers testified that Wheeldon resisted and obstructed Trooper Gettel during the search warrant's execution, the jury clearly did not believe the police officers because it acquitted Wheeldon of resisting and obstructing. Thus, it is not probable that the jury weighed the testimony pertinent to Wheeldon's resisting and obstructing charge when making findings on his other charges. We conclude that Wheeldon has not shown that it is more probable than not that the trial court's decision affected the outcome of his trial or made his trial fundamentally unfair. Thus, Wheeldon is not entitled to reversal on this ground.

IV. THE JURY'S VIEW OF THE EVIDENCE

A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court's decision to order a jury view of property.[42] The trial court abuses its discretion when its determination falls outside of the range of principled outcomes.[43]

B. LEGAL STANDARDS

MCL 768.28 provides that a court may order a view by a jury in a criminal case whenever the court deems it necessary. MCR 2.513(J) also grants the trial court discretion to allow the jury to view property. However, a party may not use a jury view to augment the evidence.[44]

C. APPLYING THE STANDARDS

Wheeldon contends that the trial court abused its discretion when it allowed the jury to view the property because it allowed the jury to infer that Wheeldon acquired the property illegally. We disagree.

Here, the prosecutor demonstrated through testimony and photographs that police recovered over a hundred items of stolen property, including large items like tractors and vehicles. Thus, the jury's view of the property did not improperly augment the evidence by exposing it to facts not already in evidence. Further, the trial court's determination that it was

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[40] *Williams*, 483 Mich at 231-232.

[41] *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).

[42] *People v Herndon*, 246 Mich App 371, 418; 633 NW2d 376 (2001).

[43] *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010).

[44] *People v Connor*, 295 Mich 1, 6; 294 NW 74 (1940).

necessary for the jury to view the large items of property was within its discretion, and we are not convinced that its decision was outside the principled range of outcomes.

Further, "[w]e presume that a jury follows its instructions."[45] Here, the trial court issued a prophylactic instruction shortly after the jury viewed the property. It clearly instructed the jury that it was not to make inferences on the basis of its view of the property, and that the prosecutor must still prove that Wheeldon stole the property. The trial court carefully guarded against unfair prejudice from the jury view. We conclude that its decision did not prejudice Wheeldon.

V. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.[46] Thus, this Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction.[47] We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt.[48] When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact's role to determine the weight of the evidence or the credibility of the witnesses.[49]

B. RACKETEERING

1. LEGAL STANDARDS

Michigan law prohibits a person associated with an enterprise to participate in a pattern of racketeering activity:

> A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.[50]

Thus, to find a defendant guilty of racketeering, the jury must find beyond a reasonable doubt that (1) an enterprise existed, (2) the defendant was employed by, or associated with, an

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[45] *People v Armstrong*, 490 Mich 281, 294; 806 NW2d 676 (2011).

[46] *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992). See *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

[47] *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

[48] *Id*.

[49] *Wolfe*, 440 Mich at 514-515; *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

[50] MCL 750.159i(1).

enterprise (3) the defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, and (4) a pattern of racketeering activity consisting of at least two racketeering offenses.[51]

2. APPLYING THE STANDARDS

Wheeldon contends that the evidence was insufficient to sustain his conviction of racketeering because a single person cannot constitute an enterprise. We conclude that the prosecutor presented sufficient evidence that Wheeldon was associated with a criminal enterprise.

In order to prove racketeering, a prosecutor must show that a defendant associated with a separate and distinct physical or legal person or entity.[52] Here, Cunningham testified that he worked with Wheeldon on numerous home invasions. Thus, the prosecutor showed that Wheeldon associated with Cunningham. There is no doubt that Cunningham is a separate person. We conclude that the jury had sufficient evidence from which it could find that Wheeldon associated with a criminal enterprise.

Wheeldon also contends that the prosecutor did not show that he committed two or more predicate criminal acts. We disagree.

To show a pattern of racketeering activity, the prosecutor must prove that the defendant committed two or more acts of racketeering.[53] The prosecutor must also prove that the defendant committed each element of the predicate criminal acts.[54]

Felony receiving and concealing stolen property under MCL 750.535 is an act of racketeering.[55] Receiving and concealing stolen property is a felony if the property has a value of (1) $20,000 or more, or (2) $1,000 or more but less than $20,000.[56] The property's value is an essential element of the crime of receiving and concealing stolen property.[57] The property's owner is qualified to testify about the property's value, unless the owner bases his or her valuation on personal or sentimental value.[58] Further, the jury may determine value by

[51] *Martin*, 271 Mich App at 289-290.

[52] *People v Kloosterman*, 296 Mich App 636, 641-642; 823 NW2d 134 (2012).

[53] MCL 750.159f(c).

[54] *Id*. at 290.

[55] MCL 750.159g(jj).

[56] MCL 750.535(2)(a) and (3)(a).

[57] *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002).

[58] *Id*. at 429.

considering the evidence and applying its judgment.[59] Reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.[60]

Here, the prosecutor asserted that the predicate offenses of racketeering were two offenses of receiving and concealing stolen property between November 2, 2005, and November 3, 2010. Brooke Risner identified two John Deere tractors that were stolen from his home in 2010—one valued at $29,000, and the other valued at $11,312.11. Thus, Risner's testimony alone was sufficient to establish two acts of felony receiving and concealing stolen property—one under MCL 750.535(3)(a) and the other under MCL 750.535(2)(a). As well as relying on Risner's testimony, the jury could have reasonably concluded that the aggregate value of the items of other stolen property, which included sophisticated tools and construction equipment, was over $1,000.[61] We conclude that the prosecutor presented sufficient evidence of Wheeldon's predicate criminal acts of racketeering.

Finally, Wheeldon contends that insufficient evidence supported that he conducted a criminal enterprise for financial gain. We disagree.

Cunningham testified that in exchange for providing Wheeldon with stolen property, Wheeldon provided him with cash and drugs. Police recovered stolen property and a large quantity of cash from Wheeldon's property. Thus, the jury could reasonably infer that Wheeldon received and concealed stolen property in order to profit. We conclude that the jury had sufficient evidence from which to infer that Wheeldon conducted a criminal enterprise for financial gain.

We conclude that sufficient evidence supported Wheeldon's racketeering conviction.

C. POSSESSION WITH INTENT TO DELIVER

Wheeldon contends that the record contains no evidence that he intended to deliver cocaine and marijuana. We disagree.

The jury may infer a defendant's intent to deliver a controlled substance "from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest."[62] Here, officers seized 5,029 grams of marijuana and 40.64 grams of cocaine from Wheeldon's property. Cunningham testified that Wheeldon delivered marijuana and cocaine to him in 2005 and 2010, and that he saw Wheeldon delivering marijuana and cocaine to others. Given the quantity of drugs and Cunningham's testimony, we conclude that the jury properly inferred that Wheeldon intended to deliver the drugs.

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[59] *People v Toodle*, 155 Mich App 539, 553; 400 NW2d 670 (1986).

[60] *Kanaan*, 278 Mich App at 622.

[61] See MCL 750.535(6); *Toodle*, 155 Mich App at 553.

[62] *Wolfe*, 440 Mich at 524.

VI. JUDICIAL BIAS

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

To preserve an issue of judicial bias, a party must raise the claim before the trial court.[63] Where a defendant has not done so, we review the issue for plain error affecting the party's substantial rights.[64] An error is plain if it is clear or obvious, and the error affected the defendant's substantial rights if it affected the outcome of the lower court proceedings.[65]

B. LEGAL STANDARDS

Due process and the fair administration of justice require that a neutral and unbiased decision-maker hear and decide a case.[66] A judge must be disqualified when he or she cannot hear a case impartially, including when a judge is personally biased or prejudiced against a party.[67] However, the party who alleges that a judge is biased must overcome the heavy presumption in favor of judicial impartiality.[68] The party must demonstrate that the judge is unable to make fair rulings, or has a hostility or deep-seated antagonism toward the party.[69]

C. APPLYING THE STANDARDS

Wheeldon has scattered arguments of judicial bias throughout his arguments on appeal. We conclude that his assertions are meritless.

Judicial remarks that are critical of or hostile to counsel or the parties are generally insufficient to demonstrate judicial bias.[70] Here, a review of the trial court's remarks indicate that, while the trial court was brusque with a defense witness who continued to talk over an objection, its remarks did not show a deep-seated antagonism toward the witnesses or Wheeldon. Further, the trial court treated the prosecutor's witnesses similarly when they attempted to continue to answer a question after counsel objected. We conclude that Wheeldon has failed to show a clear or obvious error because there are no indications of judicial bias in the record.

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[63] MCR 2.003(D); *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011).

[64] *Jackson*, 292 Mich App at 597; *Carines*, 460 Mich at 763.

[65] *Id*.

[66] *Jackson*, 292 Mich App at 598 (quotation marks and citation omitted). See *Mayberry v Pennsylvania*, 400 US 455, 465; 91 S Ct 499; 27 L Ed 2d 532 (1971).

[67] MRE 2.003(C).

[68] *Jackson*, 292 Mich App at 598 (quotation marks and citation omitted).

[69] *Id*.

[70] *Id*.

VII. CONCLUSION

We conclude that the trial court did not err by denying Wheeldon's motion to suppress evidence that police seized under the search warrants. We conclude that reversal is not warranted on the basis that the trial court failed to sever Wheeldon's resisting and obstructing charge. We conclude that the trial court did not abuse its discretion by allowing the jury to view the seized property. We conclude that sufficient evidence supported the jury's determination that Wheeldon was guilty of racketeering and possession with intent to deliver cocaine and marijuana. Finally, we conclude that Wheeldon has not shown plain error on his claims of judicial bias.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ William C. Whitbeck